BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)))))))))	CG Docket No. 03-123

COMMENTS OF SNAP TELECOMMUNICATIONS, INC.

Snap Telecommunications, Inc. ("Snap!VRS" or "Snap") hereby files its response to the Consumer and Governmental Affairs Bureau's public notice[1] seeking comment on the National Exchange Carrier Association's ("NECA") proposed compensation rates for TRS providers.[2] Snap also files its comments in ASL; the video is available on Snap's website at: http://www.snapvrs.com/about_us/press/article/?id=36.

In summary, Snap is of the view that each of the NECA's proposed Video Relay Service ("VRS") rate alternatives (whether based on providers' projected or actual historical cost data) does not reflect the true and complete costs of providing VRS consistent with the mandates of

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1 *National Exchange Carrier Association Submits the Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services Fund for the July 2010 Through June 2011 Fund Year*, CG Docket No. 03-123 ("Public Notice") DA 10-761 (rel. April 30, 2010).

2 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* CG Docket No. 03-123; CG Docket No. 10-51, Payment Formula and Fund Size Estimate, Interstate Telecommunications Relay Service (TRS) Fund For July 2010 through June 2011 ("2010 Rate Filing") (April 30, 2010).

Title IV of the Americans with Disabilities Act ("ADA").[3] As Snap's cost data makes abundantly clear, its real-world VRS costs per-minute are significantly higher than NECA's various calculated proposed rates. If NECA's proposed rates are adopted, Snap, as with most if not all VRS providers, would be severely challenged to provide an ADA-compliant level of service, and furthermore, put into serious question the feasibility of continuing to do business in the provision of VRS.

As the administrator of the Telecommunications Relay Service ("TRS") Fund, NECA's core directive is to "assure the accuracy and integrity" of payments from the Fund;[4] while NECA is contracted to collect data from providers to help determine TRS Fund requirements, the responsibility of determining the rate of compensation required to implement the requirements of Title IV of the ADA is statutorily exclusively vested in the Commission.[5] The Commission has ample evidence that the real-world consumer experience in using relay services is still a far cry from the ADA's mandate of functional equivalence in telecommunications.

Snap is of the view that the Commission is obligated to assess, in close collaboration with relay stakeholders, the requirements in achieving functional equivalency in telecommunications above and beyond the TRS mandatory minimum standards (including the actions necessary to close the gap) and adjust the compensation rates accordingly. In the interim, Snap urges the

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[3] Pub. L. No. 101-336, § 401, 104 Stat.327, 366-69 (adding Section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225) ("Section 225 of the Communications Act.").

[4] 47 C.F.R. §64.604 (c)(5)(iii)(C).

[5] Section 225 of the Communications Act, 47 U.S.C. §§ 225(a)(3), (b)(1) (Congress directed the Commission to ensure that all deaf, hard of hearing and speech impaired individuals have access to "functionally equivalent" TRS, "to the extent possible and in the most efficient manner.").

Commission to maintain the current rates for Tiers I and II,[6] or to slightly increase the rates and adjust the width of Tiers I and II to reflect operational cost increases, to account for excluded significant incremental costs of service, to preserve and promote the ability of smaller and emerging providers to compete, and to allow for provider capacity to continue progressing towards enabling functional equivalency through service and product enhancements. The Commission should also continue the rate program on a multi-year basis to ensure that providers have a stable and predictable foundation to invest in high quality and innovative VRS choices for customers. In addition, to the extent that the Commission seeks to refresh the record on the 2009 NPRM,[7] Snap reiterates in full its comments in response to that NPRM.[8]

I. THE CURRENT RATE METHODOLOGY ENABLED COMPETITION AND GREATER CONSUMER CHOICES.

A. The current rates laid down a foundation for a competitive and sustainable VRS program.

The Commission adopted in November 2007 a tiered rate methodology for VRS "in furtherance of promoting competition" to ensure that "providers that handle a relatively small amount of minutes and therefore have relatively higher per-minute costs will receive

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[6] Tier III was intended to ensure that dominant VRS providers are not overcompensated. *See In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007), as corrected by Erratum, DA 07-5089, 22 FCC Rcd 21842 (2007) ("*2007 Rate Order*") ("[U]sing three tiers is appropriate to ensure…the larger and more established providers are not overcompensated due to economies of scale.") As an emerging, non-dominant provider, Snap is not in a position to comment on whether an adjustment to Tier III is necessary to prevent excessive compensation of dominant VRS providers.

[7] *See Public Notice* at 1.

[8] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Comments of Snap Telecommunications, Inc., ("Snap 2009 Rate NPRM Comments") (June 15, 2009).

compensation on a monthly basis that likely more accurately correlates to their actual costs."[9] The Commission recognized that historically, the cost and demand data of a dominant provider "largely" determined the rate and established rate tiers carefully calibrated to match the higher costs of emerging and smaller providers who do not have the scale and scope economies and efficiencies of larger, dominant providers.[10] A critical aspect of the adopted rate methodology was the establishment of a stable and predictable three-year rate plan which allowed providers to plan, budget and make investments in the provision of VRS.[11]

The consensus view is that the current rate methodology has been a tremendous success story resulting in significant advances in technology, equipment, services and features available to a growing number of relay consumers.[12] The level of rate compensation enabled, among other things, shorter hold times, clearer video displays and connections, higher quality video interpreting, the establishment of a ten-digit numbering system, automatic 9-1-1 services, new video hardware and software, video mail, expanded video technology installations in businesses, workplaces and public places, and enhanced features for video dialing and connections. These advancements were spurred in large part by emerging and non-dominant providers being able to compete and invest in services and products in response to consumers' demand for functionally equivalent VRS. While this positive progress has recently been challenged and considerably slowed by the fraudulent or unethical activity of some individuals, the uncertainty about which types of calls are compensable and an indeterminate process used in reviewing and compensating

[9] *2007 Rate Order* ¶¶ 53-54.

[10] *Id.* ¶¶ 52-53.

[11] *Id.* ¶ 56. *See also* ¶ 11 (the FCC was "particularly interested in adopting a methodology that would result in more predictability for the providers").

[12] *See e.g., Sprint Nextel, Snap, Sorenson and Purple Ex Parte,* CG Docket No. 03-123 (May 1, 2009).

certain VRS calls, there is absolutely no question that the VRS experience of consumers today is significantly closer to functional equivalency as compared to when the Commission adopted the tiered rate methodology.

B. Under the current rate program, Snap!VRS has been able to emerge as a key provider of quality and innovative VRS.

Based on the soundness, stability and long-term predictability of the 2007 rate methodology, Snap was able to secure financing to invest in technology and key initiatives which significantly enhanced the accessibility of telecommunications for relay customers. Snap used the new capital for its continued investment and distribution of the Ojo video phone, the first interoperable alternative to Sorenson's video devices and the first interoperable video phone using Session Initiated Protocol ("SIP"). In doing so, Snap was driven by a philosophy of providing relay consumers with more choices of telecommunication products, as well as offering the highest quality, fully certified interpreting services. Snap heavily invested in the technology because relay consumers currently cannot obtain interoperable video phones from a non-VRS provider source and the key role of video phones have in determining consumer choice of the VRS provider they use.

Because of its more efficient, secure and leaner bandwidth features, SIP has been widely adopted by providers, greatly advancing videophone usability in a variety of settings –at businesses, educational institutions, workplaces, and public places – which were previously inaccessible due to the limitations of the legacy H.323 protocol. The current rate program also enabled Snap to launch a workplace initiative to provide Ojos to deaf employees who were heretofore without videophones due to the stringent IT infrastructure and security requirements of their employers. Snap teamed up with a technology provider to develop a revolutionary SIP-based interoperable soft-phone which is compliant with Section 508 of the Rehabilitation Act of

1973,[13] which it plans to soon roll out to governmental offices to assist them in providing their employees with a 508-compliant converged audio/video/text phone solution.

The current rate methodology has also allowed Snap to make a considerable investment in Viable VRS. Snap's motivation in making this financial decision was several fold: Snap desired to become more deaf-centric in the provision of its services; to be more proficient with its outreach and field services for relay customers; and most critically, to maintain the availability of Viable video devices and programs to the thousands of customers who depend on the technology to access VRS and point to point communications. Although it has been challenging in instituting Snap's rigorous, disciplined and ethical management and internal controls at Viable, Snap is pleased that it has been able to immediately turn Viable around to become a clean and conscientious business, and allowing it to strictly focus its capability and experience on the delivery of its VRS and videophones for customers. Snap has also been able to gain from a newly positioned Viable considerable expertise in launching a nationwide field service to provide customers with support in accessing VRS and video products, including training and installation services. It is worth noting that without Snap's involvement and investment, Viable would have long ago perished leaving thousands of its customers with nonfunctioning Viable video phones (VPADs) without recourse to off-the-shelf replacements and wasting millions of dollars paid out from the TRS Fund to build and make available that technology for relay customers.

[13] 29 U.S.C. 794d.

II. NECA'S PROPOSED VRS RATES ARE HARMFULLY DISCONNECTED FROM ADA MANDATES AND PROVIDERS' ACTUAL COSTS.

A. NECA's proposed VRS rates are neither substantiated by the ADA's mandates nor providers' actual costs.

The Commission particularly seeks comment on whether it should adopt for the 2010-11 TRS Fund year NECA's proposed rates for VRS based on the 2009 average actual historical cost data submitted by providers.[14] In its *2010 TRS Rate Filing*, NECA maintains that VRS providers' weighted actual per-minute costs were $4.1596 in 2009 and proposes as one alternative rates of $5.7754 for Tier I (<50,000 monthly minutes), $6.0318 for Tier II (50,001-500,000 monthly minutes) and $3.8963 for Tier III (>500,000 monthly minutes).[15] Snap is of the strong view that the Commission should reject NECA's proposed rates as being disconnected from the functional equivalency mandate of the ADA and providers' comprehensive true costs of providing VRS.

i. NECA's methodology is not grounded in the ADA.

The cost data NECA collects from providers[16] are those categories of costs deemed allowable by NECA based on its undisclosed assessment of certain operating costs incurred in providing VRS. Neither NECA nor the Commission has published information about how the "allowable" costs specifically relate to achieving the ADA's TRS mandate and the implementing Commission rules, orders and guidance. The NECA filing is devoid of any metrics to indicate where the TRS program is in terms of complying with ADA Title IV mandates and its implementing TRS rules; indeed there is a total absence in the NECA document of any

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[14] *See Public Notice* at 1 and 2.

[15] *2010 TRS Rate Filing* at 17 and 25. The particular tiered rate proposal was calculated using the weighted averages of VRS providers' actual historical cost data for 2009, including allowances of 1.6% for cash working capital, 3.2% for growth to the Fund, and $0083 per minute for ongoing E911 and ten – digit numbering costs.

[16] *See Id.* at 18, Figure 1, and Appendix B.

discussion about "functional equivalency," including the level of funding necessary to remedy any deficiencies. In addition, the NECA filing is silent on whether its proposed rates enable the Commission to fulfill its ADA obligation to implement the TRS program at a level which "encourage . . . the use of existing technology and do not discourage or impair the development of improved technology."[17]

In the past providers have offered the Commission possible indicators to measure the effect of the compensation rates in advancing the statutory objectives for relay customers,[18] but these suggestions have not been adopted by the Commission nor NECA. It is also necessary to note that NECA's filing lacks the inclusion of a consumer perspective. NECA reports that it presented its preliminary proposed reimbursement rates on April 8, 2010 to its TRS Advisory Council (comprised of consumers, regulators, administrators and providers) but does not say what the Council's views were or even whether their feedback was solicited and incorporated before submitting the final rate proposal to the Commission.[19]

NECA's posture occurs despite ample evidence publicly offered through Commission forums that consumers currently have a less than functionally equivalent experience in using relay.[20] Great numbers of deaf and hard of hearing consumers continue to be underserved, particularly those who have limited English proficiency, are deaf-blind, elderly, low-income, live

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[17] Section 225(d)(2) of the Communications Act of 1934, as amended; 47 C.F.R. § 225(d)(2).

[18] *See, Snap Telecommunications, Sprint Nextel Corporation, and Sorenson Communications Ex Parte,* CG Docket No. 03-123 (June 27, 2007). *See also, Joint Comments of Communications Access Center for the Deaf, and Hard of Hearing, GoAmerica, Hands On, Snap Telecommunications, Sorenson and Sprint Nextel,* CG Docket No. 03-123 (October 30, 2006).

[19] *2010 Rate Filing* at 29-30.

[20] *See FCC Workshop on Video Relay Service Reform*, (December 17, 2009); *FCC Workshop on Ten-Digit Numbering and E911 Requirements for Video Relay Service and IP Relay* ("FCC Workshops") (September 25, 2009).

in rural areas or are also members of culturally diverse populations.[21] Consumers continue to be plagued by recurring issues with, among other things, acquiring and using video technology, achieving reliably impeccable clarity and connectivity of their video technology, and having access to video technology outside their homes in an equivalent manner hearing people are accustomed to with their telecommunication technology.[22] NECA fails to recognize these real-world challenges in collecting limited data and utilizing an insular method of computing VRS costs. As a result, providers must somehow configure their administrative and operating costs to try to match the figure established by NECA rather than setting a business approach focused on achieving the level of service consumers are entitled to under the ADA.

ii. NECA's methodology is neither apparent nor explanatory.

Beyond achieving minimum TRS requirements, VRS providers have different strategies, operations, costs and efficiencies. However, NECA engages in an opaque and non-codified process which does little to explain the correlation of those differences with the provision of functionally equivalent telecommunications and, as a result, providers and relay stakeholders find it impossible to assess and provide meaningful feedback on the proposed compensation rates. Nor has NECA made any attempt to engage in a discussion with providers or relay stakeholders about rate methodology, to probe from stakeholders and experts relevant and critical information outside NECA's cost information in potentially refining and making more useful its final submission to the Commission. NECA's weighted average figure is so tilted towards the costs of a single dominant provider that it is impossible to assess whether their tiered

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[21] *See e.g., Telecommunications Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Comments of Telecommunications for the Deaf and Hard of Hearing Inc., et al at 4-6, 10 ("2006 Comments of Consumer Groups") (Oct. 30, 2006).

[22] *See e.g., FCC Workshops.*

rate proposals are reasonable and rationally related to the actual costs of efficient non-dominant providers. Providers and stakeholder groups have previously commented about the gaps inherent in NECA's rate methodology and expressed concern that, if ratified, would risk a violation of the ADA if providers weren't compensated for their reasonable costs in providing VRS consistent with statutory mandates.[23] NECA has conceded in the past that it needed "specific guidance" from the FCC on key methodology issues.[24]

iii. NECA's proposed rates exclude necessary business costs.

As providers and deaf consumer organizations have repeatedly commented to the Commission, the allowed costs reported to NECA do not represent the comprehensive and necessary costs incurred by VRS providers in meeting the needs of relay customers. Substantial costs expended by providers, such as video phone related costs, research & development costs, interpreter training, interest on loans, costs of acquiring and porting ten digit numbers, calls involving more than one video interpreter, and costs to support point to point calling are excluded from the cost data compiled by NECA. Consumer organizations have long maintained that the Commission should consider through a public inquiry and comment process certain excluded costs such as marketing and consumer outreach costs, research and development costs, and equipment costs, as well as all other reasonable costs, before issuing a NPRM on VRS rate

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[23] *See, e.g., Snap 2009 Rate NPRM Comments* at 14; *Telecommunications Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Comments of Telecommunications for the Deaf and Hard of Hearing Inc., et al at 9-13 ("2009 Comments of Consumer Groups")(June 26, 2009).

[24] *Reply Comments of the National Exchange Carrier Association*, CG Docket No. 03-123, at 8 (NECA in responding to numerous commenters objecting to the exclusion or limitation of certain cost data submitted by providers and the methodology used to adjust service demand and costs to arrive at the proposed video relay rates said "[s]pecific guidance from the Commission as to methods for cost allowances and disallowances will assist the Administrator and providers in understanding and predicting future compensation levels for the provision of relay services.") (May 24, 2006).

methodology for a new multi-year rate period.[25] Absent the consideration of the excluded costs listed above, NECA's proposed rates cannot be said to ensure that functionally equivalent service will be available to relay customers.

B. Snap's actual costs are significantly higher than NECA's weighted average per-minute costs.

In response to the 2009 rate NPRM, Snap took the unprecedented step of disclosing previously confidential data showing that its actual VRS costs per minute as submitted to NECA for 2007 and 2008 were $17.83 and $11.32 respectively – which was several times higher than the weighted average costs for all providers cited in the NPRM (i.e., around $4.00).[26] Although provider cost and demand data submissions to NECA are treated as confidential, Snap decided to make this data public given deaf consumer organizations' request to have access to this data and the potential risk of harm to the quality of VRS if the proposed lower rates were adopted. For the same reasons, Snap now discloses that its reported costs for 2009 were significantly higher than NECA's calculated 2009 weighted average per-minute costs of $4.1596, and takes the unprecedented step of expanding its disclosure of previously confidential data showing in detail its real-world investment and operating costs.

i. Snap's cost data reported to NECA.

In its annual cost and demand data filing with NECA, Snap reported the following *allowable* costs, which totaled $7.35 per minute:[27]

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[25] *See 2009 Comments of Consumer Groups* at 14; *See also 2006 Comments of Consumer Groups.*

[26] *See Snap 2009 Rate NPRM Comments* at 7-8.

[27] In addition, Snap reported to NECA its **projected** 2010 allowable costs as $7.49 per-minute and its projected costs including 10#/E911 and interest expenses as $8.27 per-minute.

2009 Base Rate - Actual "Includable" Expenses (per NECA Costs Submission)

- Annual Recurring Fixed Expenses……………………………………………$0.23 per minute
- Annual Recurring Variable Expenses………………………………………$3.50 per minute
- Annual Administrative Expenses……………………………………………$2.99 per minute
- Annual Depreciation Associated w/Capital Investment………………$0.16 per minute
- Other TRS Expenses (Marketing & Outreach)……………………………$0.32 per minute
- **Sub-Total Pre-Capital Expense per Minute……………………………$7.20 per minute**

2009 Additional Allowances (per NECA Costs Submission)

- Capital Investments (depreciable fixed assets only @ 11.25%)….$0.05 per minute
- Additional Capital Allowance (@1.4% factor)…………………………$0.10 per minute
- **Sub-Total Capital……………………………………………………………$0.15 per minute**
- **Total Expense Per Minute…………………………………………………$7.35 per minute**

Snap also reported to NECA the costs of ten-digit numbers/E911 expenses (which are separately reimbursed) and interest expenses incurred on loans for investment capital because their inclusion presents a more complete and accurate picture of Snap's actual VRS costs:

2009 Actual "Excluded" Expenses (per NECA Costs Submission)

- 10#/E911 Expenses……………………………………………………………$0.19 per minute
- Interest Expense (@75%)……………………………………………………$1.13 per minute
- Allowance for Capital on Interest Expense………………………………$0.02 per minute
- **Sub-Total Excluded Expenses……………………………………………$1.34 per minute**
- **2009 Total Expense Per Minute Incl. Excluded Expenses…………$8.69 per minute**

ii. Excluded Customer Operations Costs

There are critical VRS-related operational expenses incurred by Snap which are not deemed allowable costs factored into NECA's proposed rate, including the following:

1. Field Service Costs – as all providers have discovered, consumers require help with installation and training associated with their video devices, without which consumers are unable to access and use relay services. These costs, largely represented by payroll and

travel expenses, are currently excludable from NECA's rate computation and represent an additional $0.19 per-minute cost to Snap above NECA's calculated rate.

2. Technical Support and Customer Service – These functions are of paramount importance and directly determine the success or failure of the consumer experience in accessing VRS. Personnel perform essential activities specific to customer order fulfillment and incident (problem/issue resolution) management. The provision of Snap's technical support and customer services this year represents an additional $0.39 per-minute cost.
3. Ongoing Customer Fulfillment & Logistics – This organization is made up of personnel required to perform activities related to reviewing customer orders for a device or service; in the case of a device, such as an Ojo phone, selecting and provisioning the unit, packaging the unit into the shipping box, and shipping the unit to the customer. The total cost of Fulfillment & Logistics, an essential element of any company engaged in the acquisition and distribution of videophones, is currently excludable from NECA's rate computation. The impact on Snap actual costs annually is $0.10 per minute.
4. Non-Recurring Engineering (NRE) – There are many costs essential for assuring the videophone continues to function as intended for consumers which are separate from the device itself. These are platform costs which directly affect consumer access to the VRS service, stability, average speed of answer, interoperability, regulatory compliance and reporting which are excluded from the base rate calculated by NECA. Full year NRE expenses for Snap equate to $0.07 per minute.
5. Customer Operations Functional Management – This cost covers personnel who oversee and ultimately have accountability for the above activities related to the above functions,

i.e. technical & customer support, and customer fulfillment & logistics. The incremental addition to Snap's allowable costs is $0.15 per minute.

Summary of Incremental Consumer Operations Expenses:

- Field Service Costs……………………………………………………………………$0.19 per minute
- Technical & Customer Support………………………………………………..$0.39 per minute
- Customer Fulfillment & Logistics……………………………………………..$0.10 per minute
- Non-Recurring Engineering……………………………………………………..$0.07 per minute
- Customer Operations Functional Management…………………………$0.15 per minute
- **Total Incremental Actual Expenses……………………………………….$0.90 per minute**

iii. Excluded Video Phone and R&D Costs.

Exclusive of Marketing & Outreach activities (which costs are reflected in limited degree in the NECA rate methodology), one of the key competitive differentiators in acquiring new customers is the provision of video phones to relay consumers. The activities associated with acquiring new customers are similar, if not the same, for any provider in the business of distributing videophones. The actual costs per provider, however, may be quite different subject to a variety of factors including the type and unique capabilities of the video phone device, the nature of the supplier relationship, the types and quality of the tools and automation in place to facilitate and manage the process, and the number of personnel required to support distribution plans.

In Snap's case, video phone costs are broadly defined as: (1) unit costs associated with the videophone itself, (2) unit costs specific to order fulfillment, and (3) the tools and automation unit costs attributable to each device (Snap labels this category of costs as "Consumer Acquisition Costs" or "CAC"). The total cost to Snap per each VRS-active user (assuming for illustration purposes a 25% VRS-active rate) would be $2,328 per unit:

LINE ITEM	DESCRIPTION	COST
Videophone		
Ojo unit cost	Price paid to supplier for each Ojo	324.00
Home network router unit cost	Price paid to supplier for each router	50.00
Shipping and handling cost	Cost to ship each unit from supplier to warehouse	18.00
Inventory cost	Cost to store each unit before distribution (*6mos)*	18.00
	Subtotal	**410.00**
Order Fulfillment		
Order entry and validation	Cost to process each video phone order	8.50
Order fulfillment and logistics	Cost to review the order, select and provision the unit, package the shipping box, and ship to field service representative	40.00
On-premise installation	Cost for field service representative to travel to customer premise and conduct unit installation and training	90.00
Post-installation remote support	Cost for technical support representative to resolve incident	10.00
	Subtotal	**148.50**
Tools & Automation		
Customer relationship management system	Information system for managing customer orders , account information, and incidents	12.00
Order fulfillment and inventory system	Information system for managing order details and unit inventory	7.50
Field service dispatch system	Information system for managing unit installation appointments and assigning a field service representative	4.00
	Subtotal	**23.50**
	Total Unadjusted CAC	**$582.00**
	% VRS-Active	25%
	Total Adjusted CAC Per VRS-Active	**$2,328.00**

Snap’s unadjusted video phone expenses equate to $0.54 per minute. However, assuming the 25% adoption rate as illustrated above, the consumer acquisition cost would rise from $582 per device or $0.54 per minute to $2,328 per device or $2.16 per minute, adoption of the device or its use not being guaranteed yet nonetheless a real cost of doing VRS business.

The above costs and per-minute averages are exclusive of Snap’s considerable initial investments in procuring the rights to the Ojo video phone, the development of the hosting network and other technologies required to support the Ojo, and to comply with the FCC’s interoperability requirements for the Ojo to be backward compatible with Sorenson’s devices. Snap’s Ojo (and subsequently the VPADs) have greatly enhanced video phone quality and functionality for consumers. Innovation however comes at a significant cost which heretofore has not been reimbursed or subsidized whether through the base rate applied to billable call volume or through the incremental 11.25% rate of return added to the base rate to cover such investments. These investments were required by Snap before a single second of billable call volume was eligible for NECA reimbursement.

Without the concept of pricing and switching costs being introduced into the VRS market, smaller providers such as Snap will simply find it difficult to compete with the free video phones being distributed by the dominant provider and therefore have little incentive to continue to invest in product innovation. Without support from the FCC through the reimbursement rate, providers are left without the incentive or the means to manufacture and distribute enough innovative devices to make a difference, which is to expand the consumer VRS market to include underserved individuals and progress towards a functionally equivalent VRS experience.

Research & development ("R&D") is essential for providers to continue to innovate as well as to maintain compliance with operational standards in keeping with the Commission's rules. Snap suggests $0.20 per minute for R&D to be a reasonable allocation, which is currently not included in NECA's proposed rates.

iv. SNAP's VRS Costs Recap.

Taking into account the incremental videophone costs ($0.54), R&D ($0.20), and Customer Operations costs ($0.90) highlighted above, each currently excluded in NECA's consideration of proposed rates, Snap's total VRS expense is $8.99 per minute ($7.35+$1.64) before allowances for interest expense, 10# and E911. Providing for these allowances would yield a total VRS expense of $10.33 per-minute.

Given current and proposed NECA VRS rates don't account for all recurring operating costs essential for delivery of a quality VRS business, coupled with NECA withholdings of Snap (as with other VRS providers) reimbursements for certain types of calls pending some indeterminate review, Snap has scaled back its business operations to the bone as a matter of survival, while trying to hold onto and deliver a high quality level of VRS and related support to consumers. Cuts extended to management and other personnel alike and all corresponding costs which rise and fall based on the number of interpreters, field service personnel, customer and technical support operations personnel, technology infrastructure and call center platform engineers, management overhead, as well as marketing and outreach initiatives.

In addition to the severe cuts in Snap variable costs, fixed costs were deeply cut as well, particularly rents and utilities for facilities which had housed interpreters. Further, Snap was put in the position of having to all but eliminate new investments in videophone R&D, and the acquisition and distribution of additional videophones.

An appreciably lower tier I and tier II rates, as proposed by NECA, will leave Snap with only one possible path for improbable success, which is to counter the real and increasing costs of delivering its VRS business solely through scale, which requires ongoing investment and time, realistically measured in years. In effect, adopting NECA's proposed rates would be tantamount to asking Snap to take the same risk it had already taken, that is, Snap needing to invest *back into* recruiting, hiring and training personnel and their associated costs, along with the facilities to house these personnel, many of the same personnel and facilities we were put in the position of having to cut, and to do so out in front of any prospective consumer demand materializing. To put it mildly, this will require an extraordinary commitment by Snap and its funding partners. To even consider that possibility would require reimbursement rates which would provide stability and long-term predictability and, most importantly, clear visibility into a genuine return on these capital investments subject to management operating the business efficiently and appropriately.

C. NECA rates are unsustainable and should be rejected.

The actual costs of delivering VRS are different for each provider subject to their scale, whether they invest in and provide consumers with videophones, whether they have their own interpreters or sub-contract, whether they are startups or mature businesses, or whether they have brand name recognition, yet opt to deliver their business through another certified provider. Although the costs of provider businesses are highly variable, with few exceptions, nearly all costs are going up, not down. Healthcare benefits costs are on the rise. Technology and its related costs are beginning to climb as companies begin to spend again on such items. Rent, utilities, taxes, equipment, and other recurring fixed expenses are costs which predictably rise year after year.

Corporate investment in new innovation in ’09 was close to zero across all industries. Debt markets dried up and are only beginning to come back for large deals (there are no debt markets to speak of for small companies like Snap at this time). New investments in this industry are zero at this time and will remain that way given the direction of the proposed rates. Providers’ respective valuations are largely a function of their invested debt and one can appreciate the impact of NECA’s proposal by simply considering S&P’s recent downgrading of Sorenson’s debt based simply on the news of a proposed rate cut. Every major certified player in this space is for-profit and backed by institutional money, which as a pre-condition for investment requires there to be a basis for a real economic return, i.e. profit, which requires reimbursement rates to be based on cost realities. Delivering on the promise of the ADA is contingent upon this. The proposed rates are counter-intuitive to what is required to build this industry, to promote new innovation, and to achieve for consumers the promise of equality and functional equivalency.

The Commission has historically understood the incomplete NECA rate methodology and its disconnect from the mandate of the ADA and providers' real-world operating costs. In the past, NECA rate proposals employing the same methodology have consistently been dismissed by the Commission in adopting VRS rates higher than the NECA proffered weighted average cost figures. Adopting NECA's proposed rate would have a devastating effect on the provision of VRS, a severe brake on progress towards functional equivalency, innovation in expanding video technology to make workplaces, classrooms and public places more accessible, and the ability to reach out to the underserved population to include them in relay. NECA developed proposed rates which maintain the status quo as adjusted downwards to reflect efficiency-related gains, consistent with their directive as administrators of the TRS Fund to manage, preserve and protect the integrity of the Fund. The Commission is obligated to assume a different objective in setting the rates, in which ADA mandates are the decisive goals and guidance in the implementation of TRS.

III. MOVING FORWARD: KEEPING THE RATES CENTERED ON ADA GOALS.

A. The Commission must re-establish the primacy of the ADA in TRS policy decisions.

As Snap, and VRS providers generally, continue to develop new technologies and enhanced services which further aid deaf individuals in communicating in ASL, their natural language, we should find it as no surprise that consumer demand for VRS has dramatically increased. We are still in the nascent stage of the VRS experience; we are continuing to reach out to underserved communities and educating deaf people about the potential uses of telecommunications which are available to the general public on a daily basis. As VRS takes greater prominence in consumer choice of relay and draws a growing share from the TRS Fund, an emergent concern has been this: *Managing the TRS Fund appears to have become more important in some people's minds than achieving functional equivalence for the deaf*. While we must continue vigilant enforcement against bad actors that are artificially increasing the size of the Fund through incentive marketing schemes or fraudulent VRS calls, ADA mandates must drive FCC policy decisions. We are appreciative of recent statements by officials in the Consumer & Governmental Affairs Bureau assuring the Commission's commitment to carrying out its obligations under the ADA in ensuring the provision of high quality VRS,[28]and we look forward to that commitment to ADA goals being manifested in the Commission's TRS policy decisions including setting VRS compensation rates.

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[28] *See, e.g., FCC Reaffirms Rules and Policies of Video Relay Services*, Commission News Release ("It is essential to keep VRS on a sound footing. Consumers who are deaf or hard of hearing have come to rely on VRS as a service that lets them communicate easily, fluently, and expressively. The Telecommunications Relay Service Fund was established to support exactly that kind of communication.") (February 25, 2010).

Commission Chairman Julius Genachowski recently remarked that "the promise of broadband for the 54 million Americans with disabilities is falling short of the reality."[29] A Commission survey found that only 42% of people with disabilities use broadband at home, compared to 65 percent of people nationwide and that 39% of all non-adopters have a disability.[30] Due to the financial costs in obtaining the proper technology and access to use VRS, there are considerable numbers of people who cannot access VRS because they cannot afford either broadband access, the videophone they desire to use, or both.[31] The Commission has received numerous comments about individuals whose telecommunications needs have yet to be met, such as deaf-blind consumers or deaf individuals with limited language proficiency.[32] The Commission has also been petitioned with numerous requests for rulemaking, such as enabling video technology and features in certain environments (server based routing to enable VRS calls in secured networks, most commonly workplaces).[33] The Commission and the industry has not yet figured out how to satisfy consumers' repeated pleas for true choices in video equipment

[29] *Delivering on the Promise of Equal Access to Broadband for People with Disabilities* at 2, Chairman Genachowski's Remarks at the Martin Luther King, Jr. Library, Washington, DC (March 10, 2010).

[30] *A Giant Leap & A Big Deal: Delivering on the Promise of Equal Access to Broadband for People with Disabilities* at 6-7, Federal Communications Commission, Office of Strategic Planning and Policy Analysis Working Paper (April 2010).

[31] *2009 Comments of Consumer Groups*, at 13 ("Since many people who are deaf cannot obtain VRS because they cannot afford the equipment, equipment subsidization is essential to achieving universal service among the deaf and hard of hearing communities.").

[32] *See e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Joint Petition for Declaratory Ruling, AT&T, CAC, CSDVRS, LLC, GoAmerica, Inc., Lifelinks, LLC, Snap Telecommunications, Inc., Sorenson Communications, Inc., Sprint Nextel Corporation, and Viable Inc. (January 28, 2009).

[33] *See e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Purple Communications, Inc. Request for Clarification of Requirements for Populating the iTRS Database (July 21, 2009).

(being able to promptly acquire video devices, and connect with VRS and each other with the reliability and clarity hearing people have with their devices).[34] There remain challenging questions involving an essential component of VRS, sign language interpreters, issues about their supply to match the growth in demand for VRS and the scope of their video interpreting responsibilities and service, which require addressing to ensure a robust and functionally equivalent VRS.[35]

A full consideration of the gaps described above is required in refining the VRS program to ensure that it is properly positioned to continue the progress towards ADA goals. This work is an essential foundation in structuring a new rate methodology.

B. The Commission must undertake an ADA-based inquiry before determining rate methodology.

The Commission is charged with aligning the TRS program to accomplish four principal goals of the ADA – functional equivalency, maximum efficiency, improved technology and nationwide access. The Commission has not entered into a public discourse about the progress of TRS towards these ADA goals, and as discussed earlier, the NECA filing does not provide the Commission with any information about TRS in relation to the ADA. Hence, Snap fully supports consumer organizations' call for the Commission to issue a notice of inquiry to assist it in evaluating ADA related criteria as a preliminary step in deciding rate methodologies, and then issue a further notice seeking comment on specific rate proposals.[36] The Commission should

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[34] *See, e.g., 2009 Comments of Consumer Groups.*

[35] See, e.g., Letter from the Registry of Interpreters for the Deaf ("RID"), CGB Docket No 03-123 (May 11, 2010).

[36] *See 2009 Comments of Consumer Groups* at 14.

immediately begin a comprehensive proceeding to gather sufficient information about VRS relative to ADA goals as a precursor to determining the appropriate rate structure.

Snap is of the view that a full and comprehensive examination of VRS rates requires transparency. As evinced in the detailed previously confidential cost data disclosed in this filing, Snap supports a full and transparent discussion of the data gathered by NECA. To the extent that data is relied upon in determining TRS rates, it should be available for public notice and comment so that there may be meaningful discussion of VRS rate setting.

As part of its consideration of rates going forward, the Commission should gather and assess a broader range of data about consumers and how they are being served. There is little understanding about the penetration of relay services among deaf and hard of hearing users. Moreover, the Commission should collect information about VRS service quality to obtain a fuller picture of the state of the VRS industry, including the barriers to and benefits for relay consumers. Obtaining empirical information about consumers and VRS would enable the Commission to firmly ground compensation rate proposals in the evolving marketplace and the ADA.

This Commission has shown unprecedented interest in gathering comments from and collaborating with stakeholders in the process of administering its programs and establishing policy. We encourage the Commission to carry over its series of workshops and field hearings to explore in depth the TRS program in relation to the ADA. We also believe that the TRS Advisory Council represents an excellent cross section of stakeholders, including providers, fund ratepayers, state regulators and consumers. The Council should be used as a resource to review and analyze possible VRS rate structure modifications.

C. The Commission must continue a sustainable and predictable rate plan.

In adopting the tiered compensation rate, Commissioner Michael J. Copps stated that "[i]n doing so the Commission encourages competition for services while recognizing that there are efficiencies when larger providers have achieved economies of scale."[37] He went further stated that the Commission must closely monitor the tiered rate methodology and that "[i]t remains essential that going forward all of the stakeholders affected by these new rules, particularly members of the disabilities community, provide us with their input on where it is working well and where any adjustments are needed."[38]

Emerging providers such as Snap are bottlenecked by a rate program that is below their actual cost, and the effects of a dominant provider being allowed to remain unchecked in its monopoly of the VRS industry. If the Commission is to ensure a competitive market, the true costs of providing VRS in compliance with Title IV of the ADA's mandates of functional equivalency must be included in the rate. Snap is a proven efficient provider, and has worked hard to bring its operating costs steadily down while remaining competitive. Yet a rate methodology which reflects lower than the true costs of Snap and other small providers makes it a problematic challenge to remain in business and grow to achieve economy of scale and realize a reasonable return on their investment.[39]

Providers have frequently informed the Commission of their imminent needs to be reasonably compensated for research and development to keep pace with technological

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[37] Statement of Commissioner Michael J. Copps, FCC 07-186 (November 19, 2007).

[38] Id.

[39] *See 2009 Comments of Consumer Groups* at 14. ("the Commission should be sure to implement a cost methodology that provides enough support so that reasonably efficient providers can enter and remain in the VRS market but avoid providing a windfall or shortfalls to existing providers.').

developments and new TRS requirements and guidelines, as well as the capability to conduct marketing and outreach to educate people who otherwise would be less than fully aware of the benefits of VRS.[40] Customer organizations have recognized and supported the need to include these costs in the rate methodology as an imperative element of a properly situated TRS program.[41]

Snap requests that the Commission set interim rates for Tiers I and II which truly reflect the reasonable operating costs of small and emerging providers to enable them to compete and stay in the market. At a minimum, the current rates for Tiers I and II should be maintained in the new rate year(s), however Snap is of the strong view that these rates should be slightly increased and these two tiers widened to account for operational costs increases and to allow for provider capacity to innovate and enhance services and products. In addition, Snap urges that the Commission establish a multi-year interim rate so that providers maintain an incentive to continue to build for the future; otherwise we risk providers investing and spending at a minimum level until the Commission provides a long term commitment with a multi-year rate program, to the detriment of relay consumers. Snap sees the Commission's work in collecting the relevant input from stakeholders about the TRS program and then developing rate methodology based on that information as an effort which will require significant time, thus it makes ample sense to set an interim multi-year rate which will provide the stability and predictability VRS providers need to continue supporting progress towards ADA goals.

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[40] *See e.g., Snap 2009 Rate NPRM Comments* at 8.

[41] *See 2009 Comments of Consumer Groups* at 14. ("the Commission should consider marketing and consumer outreach costs, research and development costs, and equipment costs, as well as all other reasonable costs, in its VRS rate methodology. With these objectives in mind, the Commission can ensure that functionally equivalent service is available to consumers who are deaf or hard of hearing.").

IV. CONCLUSION

Based on the foregoing, Snap respectfully urges the Commission to decline adopting NECA's proposed rates. Instead the Commission should maintain or slightly increase the current VRS rate structure for Tier I and II for a multi-year period and widen the two tiers while engaging, in close consultancy with stakeholders, a careful and thorough assessment of the TRS program as scaled by ADA standards.

Respectfully submitted,

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